

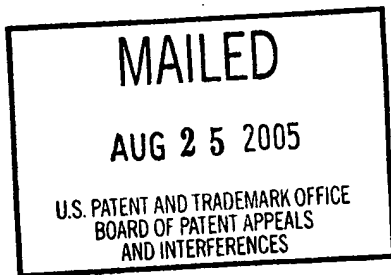
The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH BROWN, PARIJAT CHITALE, and
JOE MATTHEW PEQUIGNOT



Appeal No. 2005-0432
Application No. 09/372,750

Heard: April 07, 2005

Before BARRETT, RUGGIERO, and DIXON, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2, 3, 5-9, 11-18, 20-35, and 37-60, which are all of the claims pending in this application.

We REVERSE and enter NEW GROUNDS OF REJECTION under 35 U.S.C. § 112, SECOND PARAGRAPH and 35 U.S.C. § 101.

Appellants' invention relates to a method, system, article of manufacture, and propagated signal for electronically ordering photographic prints and gifts from photos.

An understanding of the invention can be derived from a reading of exemplary independent claims 28, 37, and 41, which are reproduced below.

28. A network photo print system, comprising:
a user station, capable of running

a camera/ scanner applications program for supplying
first image data to the user station,

a photo editing applications program for supplying
second image data to the user station,

an operating system, including an operating system
desktop shell interface and an extension to the operating
system desktop shell interface, the shell extension supplying
third image data to the user station, wherein the shell
extension is capable of facilitating an order, and

a network access protocol module capable of
receiving any one of the first, second, and third image data,
receiving order and merchandise availability information from
an external network entity; processing the order based on
any one of the first, second, and third image data, and
outputting any one the first, second, and third image data;

a network sales/order processing server for receiving the order and
for receiving any one the first, second, and third image data image data
from the user station after receiving the order; and

a photofinishing lab for producing photographic-quality prints
images based on the order an any one the first, second, and third image
data from the network sales/order processing server.

37. A computer program embodied in a computer readable medium for on-line ordering of image-related services, comprising:

- a receiving code segment for receiving, at a user station, a digital image;

- a network connection code segment for establishing a network connection between said user station and an external network entity;

- accessing an application at the external network entity through the network connection;

- an ordering code segment for exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image; and

- an uploading code segment for uploading said digital image to said external network entity subsequent to exchanging all ordering information.

41. A computer signal for on-line ordering of image-related services, comprising:

- a receiving segment for receiving, at a user station, a digital image;

- a network connection segment for establishing a network connection between said user station and an external network entity;

- accessing an application at the external network entity through the network connection;

- an ordering segment for exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image; and

- an uploading segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

Appeal No. 2005-0432
Application No. 09/372,750

The prior art of record relied upon by the examiner in rejecting the appealed claims is as follows:

Enomoto et al. (Enomoto)	5,974,401	Oct. 26, 1999
Garfinkle et al. (Garfinkle)	6,017,157	Jan. 25, 2000 (filed Dec. 24, 1996)

Claims 2, 3, 5-9, 11-18, 20-35 and 37-60 stand rejected under 35 U.S.C. § 103 as being unpatentable over Enomoto in view of Garfinkle.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 22, mailed Jun. 3, 2004) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 21, filed Feb. 27, 2004) and reply brief (Paper No. 23, filed Aug. 3, 2004) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Turning to a consideration of the examiner's prior art rejections, we note at the outset that appellants' arguments in response to the examiner's prior art rejections of

• Appeal No. 2005-0432
Application No. 09/372,750

the appealed claims are organized according to a suggested grouping of claims indicated at page 8 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. **Note In re King**, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); **In re Sernaker**, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by appellants have been considered in this decision.

Arguments which appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)].

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a ***prima facie*** case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A ***prima facie*** case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is ***prima facie*** obvious must be supported by evidence, as

• Appeal No. 2005-0432
Application No. 09/372,750

shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, “the [e]xaminer can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would

Appeal No. 2005-0432
Application No. 09/372,750

lead that individual to combine the relevant teachings of the references.” **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations in independent claim 28. Independent claim 28 recites “an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order.” From our review of the examiner’s statement of the rejection in the answer at pages 4-15 and our review of the teachings of Enomoto and Garfinkle, we find no clear teaching or fair

Appeal No. 2005-0432
Application No. 09/372,750

suggestion of the claimed “an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order.” The examiner provides extrinsic evidence of a wide spectrum of terms not used in the claims, but used in the prior art to bootstrap the premise that the prior art teaches and fairly suggests the claimed limitation. While we agree with the examiner that a wide range of operating systems exist and that operating system desktop shell interfaces existed along with shell extensions, we find no express or implied teaching or suggestion in either of the individual teachings of Enomoto, Garfinkle or any combination thereof which would have suggested the capability of facilitating an order in a network photo print system as recited in independent claim 28. The examiner maintains that the use of the terminology “ wherein the shell extension is capable of facilitating an order” is descriptive material which provides “little patentable moment” since it “merely describes inferential activities that are not involved in an active sense.” (Answer at page 14.) For support of this premise for nonfunctional descriptive material, the examiner relies on a discussion of statutory subject matter under 35 U.S.C. § 101. We find the examiner’s analysis to be flawed here and note that MPEP 2142 states:

Appeal No. 2005-0432
Application No. 09/372,750

To establish a ***prima facie*** case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. ***In re Vaeck***, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). [Emphasis added.]

Here, we find that the examiner has not established a ***prima facie*** case of obviousness of independent claim 28 and its dependent claims, and we cannot sustain the rejection of these claims. Similarly, we find that the examiner has not established a ***prima facie*** case of obviousness of independent claim 32 and its dependent claims, and we cannot sustain the rejection of these claims.

Considering now the rejections of independent claims 37 and 41 and their respective dependent claims under 35 U.S.C. § 103, we have carefully considered the subject matter defined by these claims. However, for reasons stated ***infra*** in our new rejection under the second paragraph of Section 112 entered under the provisions of 37 CFR 41.50(b), no reasonably definite meaning can be ascribed to certain language appearing in the claims. As the court in ***In re Wilson***, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) stated:

[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art. If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious - - the claim becomes indefinite.

In comparing the claimed subject matter with the applied prior art, it is apparent to us that considerable speculations and assumptions are necessary in order to determine what in fact is being claimed. Since a rejection based on prior art cannot be based on speculations and assumptions, **see In re Steele**, 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962), we are constrained to reverse, *pro forma*, the examiner's rejections of independent claims 37 and 41 and their respective dependent claims under 35 U.S.C. § 103. We hasten to add that this is a procedural reversal rather than one based upon the merits of the Section 103 rejections.

NEW GROUNDS OF REJECTION
35 U.S.C. § 112, SECOND PARAGRAPH

Independent claims 37 and 41 and their dependent claims stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.¹

¹ Additionally, we note that dependent claims 55 and 56 appear to depend from the incorrect independent claim since their preambles refer to a "computer program embodied in a computer-readable medium . . . recited in claim 32," but independent claim 32 is directed to a method while independent claim 37 is directed to "a computer program embodied in a computer-readable medium." This matter should be corrected when the application is before the examiner again.

Appeal No. 2005-0432
Application No. 09/372,750

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. **In re Johnson**, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In making this determination, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. **Id.**

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claims meet the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the examiner might desire. If the scope of the invention sought to be patented cannot be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. § 112, second paragraph, is appropriate.

Furthermore, appellants may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the Court in

Appeal No. 2005-0432
Application No. 09/372,750

In re Swinehart, 439 F.2d 210, 213-14, 169 USPQ 226, 228-29 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. **See In re Venezia**, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976).

With this as background, we analyze the specific language of the claims to determine the appropriateness of a rejection under 35 U.S.C. § 112, second paragraph.

In both independent claims 37 and 41, we find that the a computer program product and a computer signal are being recited in the preamble. The body of these claims recite various “code segment[s]” and functional “segment[s]” which more or less parallel those limitations recited in independent claim 28 with the exception of the recited step of “accessing an application at the external network entity through the network connection.” Here, we do not find that the recitation of a process step in the middle of the static program product is an appropriate limitation which would further limit the program product or the computer signal in a meaningful way. Therefore, we find that these claims and their dependent claims are indefinite since they do not define the

Appeal No. 2005-0432
Application No. 09/372,750

metes and bounds of a claimed invention with a reasonable degree of precision and particularity.

Moreover, we note that the general rule is that a claim must set out and circumscribe a particular area with a reasonable degree of precision and particularity when read in light of the disclosure as it would be by the artisan. **In re Moore**, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed in light of the specification. **Seattle Box Co. v. Industrial Crating & Packing, Inc.**, 731 F.2d 818, 826, 221 USPQ 568, 574 (Fed. Cir. 1984). Here, we find that one of ordinary skill in the art would not understand what is claimed by the express language of independent claims 37 and 41 when interpreted in light of the specification.

35 U.S.C. § 101

Independent claim 41 and its dependent claims stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 41 recites “[a] computer signal of on-line ordering of image-related services . . . ” and recites various functional “segments.” Here, we conclude that the claimed signal of independent claim 41 is non-statutory subject matter because (1) it does not fall within one of the four statutory categories of subject matter under 35 U.S.C. § 101, and (2) it is an abstract idea.

Appeal No. 2005-0432
Application No. 09/372,750

Even if the underlying process is statutory, by claiming the signal per se, appellants are seeking to patent an abstract idea or a form of an abstract idea. The signal claimed is a representation of an abstract idea. It is an idea of how to describe an abstract manipulation. The claims do not seek the protection of a physical process, product/machine, article of manufacture or composition of matter or improvement thereof as enumerated in the statutory authority of 35 U.S.C. § 101, but the idea expressed by the term "computer signal." The signal does not represent functional descriptive matter embodied in a usable medium which if imparted to a computer would cause a computer to implement a process or become a specialized machine. Here, there is no medium in which the computer signal is embodied so that it would arguably fall within the purview of the statute as an article of manufacture or machine.

The claims are directed to non-statutory subject matter because the recitation of the data or segment characteristics of a signal is not a practical application within the technological arts. The recited characteristics are a description of the signal itself and not a process that can be performed by a computer when imparted with the requisite functionality.

It is noted that MPEP § 2106 IV.B.1(c) states that "a signal claim directed to a practical application is statutory regardless of its transitory nature." It can be argued that the signal is humanly designed and cannot be considered a non-statutory natural

Appeal No. 2005-0432
Application No. 09/372,750

phenomenon, and that a signal is not abstract, but that the signal comprises energy, is detectable, and measurable as is physical and tangible and is not naturally occurring. It can be argued that the computer signal is not an idea, but is tangible, detectable, measurable, and humanly created thing. While a claim that is directed to a "signal" having a certain information content in its segments, the signal has no specific physical form, *i.e.*, it is not expressly or impliedly an electrical signal or a signal transmitted or stored in a physical medium. The signal could simply be a string of +1 and -1 values representing an encoded signal *z*, e.g., -1, +1, -1, +1, +1, -1, etc. for the encoded signal *z*.

There is nothing necessarily physical about the claimed signal. The claimed signal is an abstract quantity. The term "computer" is considered a statement of intended use for the signal. While the term "computer" implies some additional formatting for use in a computer based device, it does not clearly specify any physical properties.

We conclude that the claimed signal of independent claim 41 is non-statutory subject matter because (1) it does not fall within one of the four statutory categories of subject matter under 35 U.S.C. § 101, and (2) it is an abstract idea. The categories of statutory subject matter are "process, machine, manufacture, or composition of matter."
35 U.S.C. § 101. A "process" is a series of acts and, since claim 41 does not recite acts, it is not a process.

Appeal No. 2005-0432
Application No. 09/372,750

The three product classes of machine, manufacture, and composition of matter have traditionally required physical structure or substance. "The term machine includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." **Corning v. Burden**, 56 U.S. 252, 267 (1854); **see also Burr v. Duryee**, 68 U.S. 531, 570 (1863) (a machine is a concrete thing, consisting of parts or of certain devices and combinations of devices). Modern day machines are electrical circuits and devices, such as computers. A "manufacture" and a "composition of matter" are defined in **Diamond v. Chakrabarty**, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980):

[T]his Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." **American Fruit Growers, Inc. v. Brogdex Co.**, 283 U.S. 1, 11 (1931). Similarly, "composition of matter" has been construed consistent with common usage to include "all compositions of two or more substances and ... all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." **Shell Development Co. v. Watson**, 149 F. Supp. 279, 280 (D.C. 1957) (citing 1 A. Deller, Walker on Patents § 14, p. 55 (1st ed. 1937)). [Parallel citations omitted.]

A signal, while capable of being physical, has no concrete tangible physical structure, and does not itself perform any useful, concrete and tangible result; thus, a signal does not fit within the definition of a "machine." A signal is not matter and thus is not a "composition of matter" under the statute.

A "manufacture" is the residual category for products. 1 Chisum, **Patents** § 1.02[3] (2004) (citing I.W. Robinson, **The Law of Patents for Useful Inventions** 270 (1890)). If a signal falls within any category of § 101, it must fall within this category, and thus we look at the category in more detail. The CCPA held in **In re Hruby**, 373 F.2d 997, 153 USPQ 61 (CCPA 1967) that there was no distinction between the meaning of "manufacture" in § 101 and "article of manufacture" in § 171 for designs. The issue in **Hruby** was whether that portion of a water fountain which is composed entirely of water in motion was an article of manufacture. The CCPA relied on the analysis of the term manufacture in **Riter-Conley Mfg. Co. v. Aiken**, 203 F. 699 (3d Cir.), **cert. denied**, 229 U.S. 617 (1913), a case involving a utility patent. The CCPA stated in **Hruby**:

The gist of it is, as one can determine from dictionaries, that a manufacture is anything made "by the hands of man" from raw materials, whether literally by hand or by machinery or by art.

373 F.2d at 1000, 153 USPQ at 65. The CCPA held that the fountain was made of the only substance fountains can be made of--water--and determined that designs for water

fountains were statutory. Articles of manufacture in designs manifestly require physical matter to provide substance for embodiment of the design. Thus, since "article of manufacture" under § 171 has the same meaning as "manufacture" under § 101, it is inevitable that a manufacture under § 101 requires physical matter.

Some further indirect evidence that Congress intended to limit patentable subject matter to physical things and steps is found in 35 U.S.C. § 112, sixth paragraph, which states that an element in a claim for a combination may be expressed as a "means or step" for performing a function and will be construed to cover the corresponding "structure, material, or acts described in the specification and equivalents thereof." "Structure" and "material" indicate tangible things made of matter, not energy.

Since the claimed signal is not "made" from physical substance, we conclude that it is also not a "manufacture." In summary, we hold that the signal of claims 20-27, 41-45, and 57-60 is non-statutory subject matter because it does not fall within any category of § 101. Even if the signal were interpreted to be an electrical signal, it would not have physical substance and would not fall within § 101. **See In re Bonczyk**, 10 Fed. Appx. 908 (Fed. Cir. 2001) (unpublished) ("fabricated energy structure" does not correspond to any statutory category of subject matter and it is unnecessary to reach the alternate ground of affirmance that the subject matter lacks practical utility).

In addition, one of the judicially recognized exceptions is an "abstract idea."

Diamond v. Diehr, 450 U.S. 175, 185, 209 USPQ 1, 7 (1981). Signals can be physical quantities or abstract quantities. **See In re Walter**, 618 F.2d 758, 770, 205 USPQ 397, 409 (CCPA 1980) ("The 'signals' processed by the inventions of claims 10-12 may represent either physical quantities or abstract quantities; the claims do not require one or the other"). The claimed signal has no physical attributes and is thus considered an "abstract idea." No practical application is recited for the signal because the signal is not applied to subject matter that falls within § 101. Note that even when signals represent physical quantities, such as electrical signals, this is only of importance in determining whether process claims reciting operations on signals are statutory subject matter or are abstract ideas. No case, to the best of our knowledge, has ever held that signals per se are statutory subject matter. Thus, we further conclude that the signal of claims 20-27, 41-45, and 57-60 is nonstatutory subject matter because it is an "abstract idea."

While MPEP § 2106 IV.B.1(c) (8th ed., Rev. 1, Feb. 2003) states: "However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature. **See O'Reilly**, 56 U.S. at 114-19; **In re Breslow**, 616 F.2d 516, 519-21, 205 USPQ 221, 225-26 (CCPA 1980)." To the extent this statement suggests that a claim to a signal per se is statutory subject matter, it is in error. Neither **O'Reilly v. Morse** nor **Breslow** are to the contrary. In any case, the MPEP is not

binding on the Board. The practical application of a signal in a process or manufacture may be statutory, but here the claims recite a signal *per se*.

Following the holding in *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994), claims to a data structure stored in memory were held to be statutory subject matter because of the statutory nature of the memory. No memory or other physical structure is claimed here and our decision is not controlled by *Lowry*.

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

CONCLUSION

To summarize, the decision of the examiner to reject claims 2, 3, 5-9, 11-18, 20-35 and 37-60 under 35 U.S.C. § 103 is reversed, we entered a new grounds of rejection of claims 37 and 41 and their dependent claims under 35 U.S.C. § 112, Second Paragraph and we entered a new grounds of rejection of claim 41 and its dependent claims under 35 U.S.C. § 101.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED - 41.50(b)


LEE E. BARRETT
Administrative Patent Judge


JOSEPH F. RUGGIERO
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge

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Appeal No. 2005-0432
Application No. 09/372,750

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